

Joseph M. Alioto (SBN 42680)  
Tatiana V. Wallace (SBN 233939)  
ALIOTO LAW FIRM  
One Sansome Street, 35<sup>th</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 434-8900  
Email: [jmalimoto@aliotolaw.com](mailto:jmalimoto@aliotolaw.com)  
*Attorneys for Plaintiffs*

[Additional Counsel Listed on Last Page]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Christine Whalen, et al.,

Plaintiffs,

v.

Kroger Co., Albertsons Companies, Inc.,  
and Cerberus Capital Management, L.P.,

Defendants.

Case No.: 23-cv-00459-VC

**REVISED STIPULATED REQUEST FOR  
AN ORDER MODIFYING BRIEFING  
SCHEDULE AND HEARING DATES FOR  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION AND  
DEFENDANTS' MOTIONS TO DISMISS;  
[PROPOSED ORDER]**

**STIPULATION**

Pursuant to Local Rule 6-2, IT IS HEREBY STIPULATED by and between Plaintiffs and Defendants The Kroger Co. ("Kroger"), Albertsons Companies, Inc. ("Albertsons") and Cerberus Capital Management, L.P. (collectively, the "Parties"), by and through their respective attorneys of record that, if the Court approves, the hearing date for Plaintiffs' Motion for a Preliminary Injunction (ECF No. 28), filed March 23, 2023 ("PI Motion") shall be modified as

follows: the PI Motion shall be heard on July 27, 2023, or as soon thereafter as the Court may deem appropriate.

In addition, IT IS HEREBY STIPULATED by and between the Parties, by and through their respective attorneys of record that, if the Court approves, the briefing schedule and hearing date for Defendants' Motions to Dismiss (ECF Nos. 40, 42 and 48), filed April 12 and 13, 2023 ("Motions to Dismiss") shall be modified as follows: (1) Plaintiffs' Opposition to Defendants Motions to Dismiss shall be due May 11, 2023; (2) Defendants' Replies in Support of the Motions to Dismiss shall be due May 25, 2023; and (3) the Motions to Dismiss shall be heard on July 27, 2023, or as soon thereafter as the Court may deem appropriate.

In support of the stipulation, the Parties state as follows:

1. On February 2, 2023, Plaintiffs Christine Whalen, Gabriel Garavanian, Sondra K. Russell, Pamela Faust, Lisa McCarthy, Katherine R. Arcell, June Stansbury, Timothy Niebor, Clyde D. Stensrud, Len Marazzo, Yvonne Jocelyn Gardner, Pamela S. Ward, Brenda K. Davis, Jose M. Brito, Don Freeland, Harry Garavanian, Bill Rubensohn, Valarie Ann Jolly, Michael C. Malaney, Carolyn Fjord, Jan-Marie Brown, Gary Talewsky, Deborah M. Pulfer, Donna Fry, and Rosemary D'Augusta (together "Plaintiffs") filed a complaint (the "Complaint") against Kroger, Albertsons, and Cerberus Capital Management, L.P. ("Cerberus") in Case No. 3:23-cv-459.

2. On February 23, 2023, the Defendants Kroger and Albertsons entered into a stipulation with Plaintiffs extending the time for Kroger and Albertsons to answer or otherwise respond to the Complaint by 45 days, from March 1, 2023, to April 17, 2023.

3. Defendant Cerberus was served on March 27, 2023.

4. On March 23, 2023, Plaintiffs filed the PI Motion, which seeks an injunction prohibiting a proposed merger between Albertsons and Kroger and prohibiting and/or disgorging

the payment of a dividend that Albertsons paid on January 20, 2023 to its shareholders, including Cerberus.

5. On April 3, 2023, this Court granted the Parties' stipulated request for an order modifying the briefing schedule and hearing date for the PI Motion (ECF No. 30). It ordered that: (1) Defendants' Opposition to Plaintiffs' PI Motion shall be due April 20, 2023; (2) Plaintiffs' Reply in Support of the PI Motion shall be due May 4, 2023; and (3) the PI Motion shall be heard on May 18, 2023.

6. Accordingly, without the Court's approval of this stipulation, the hearing on the PI Motion would be heard on May 18, 2023; Plaintiffs' Oppositions to the Motions to Dismiss would be due April 26 and 27, 2023; Defendants' Replies in Support of the Motions to Dismiss would be due May 4, 2023; and the hearing date on the Motions to Dismiss would be held on May 18, 2023.

7. Plaintiffs subsequently developed a conflict with the May 18, 2023, hearing date.

8. As a result, on April 25, 2023, the Parties presented a second stipulation requesting that the hearing on the motion for preliminary injunction and the motions to dismiss be scheduled on June 22, 2023. That request was denied on April 27, 2023 (ECF 63) because the Court is unavailable in the latter part of June and early July, but the Court indicated that it would be available on July 20, 2023 or thereabouts.

9. Based upon the Court's Order of April 27, 2023, the Parties now stipulate to and request the following modified briefing schedule and hearing date set out below to conform to the Court's schedule and to allow adequate time to brief and prepare for the PI Motion and the Motions to Dismiss. Although there has been one prior stipulation modifying the hearing date and briefing schedule on the PI Motion and one prior stipulation modifying the briefing schedule for the motion to dismiss, because this case is still in its early stages, because the merger transaction will not close

prior to September 15, 2023, because the Defendants contend the dividend has already been paid, and because the PI Motion and Motions to Dismiss are the only substantive filings in this court, granting this stipulation, subject to the convenience of the court, will not prejudice any party.

10. Kroger and Albertsons stated in an October 14, 2022, press release announcing that they had entered into an Agreement and Plan of Merger that the transaction is not expected to close until 2024. Kroger reiterated this representation on its fourth quarter and full year 2022 earnings call on March 2, 2023. Plaintiffs have requested that Kroger and Albertsons stipulate that the transaction will not close prior to September 15, 2023, to allow time for the Court to rule on Plaintiffs' Motion for Preliminary Injunction. Consistent with the parties' previous statements that the transaction is not anticipated to close until 2024, Kroger and Albertsons hereby stipulate that the transaction will not close prior to September 15, 2023.

11. By Clerk's Notice on April 27, 2023 (ECF 64), the due date for the Parties' Joint Case Management Statement was continued to May 19, 2023, and the Initial Case Management Conference was continued to May 26, 2023 at 10:00 AM. Counsel for Albertsons has an immovable conflict on May 26, 2023. The Parties are available to conduct the Initial Case Management Conference on June 2, 2023 and, subject to the Court's approval, stipulate that the Joint Case Management Statement be due May 26, 2023, and that the Initial Case Management Conference be continued to June 2, 2023 at 10:00 AM, or as soon thereafter as the Court may deem appropriate.

Accordingly, IT IS HEREBY STIPULATED AND AGREED, by and between undersigned counsel and subject to Court approval, as follows:

1. The proposed merger between Albertsons and Kroger will close no earlier than September 15, 2023;
2. Plaintiffs' Oppositions to Defendants' Motions to Dismiss shall be due no later than May 11, 2023;
3. Defendants' Replies in Support of Defendants' Motions to Dismiss shall be due no later than May 25, 2023;
4. The Motion for Preliminary Injunction and Motions to Dismiss shall be heard on July 27, 2023, or as soon thereafter as the Court may deem appropriate;
5. The Parties' Joint Case Management Statement shall be due no later than May 26, 2023; and
6. The Initial Case Management Conference shall be continued to June 2, 2023 at 10:00 AM, or as soon thereafter as the Court may deem appropriate.

Dated: May 3, 2023

**ALIOTO LAW FIRM**

By: /s/ Joseph M. Alioto  
JOSEPH M. ALIOTO (SBN 42680)  
jmalieto@aliotolaw.com  
TATIANA V. WALLACE (SBN 233939)  
One Sansome Street, Suite 3500  
San Francisco, CA 94104  
Telephone: (415) 434-8900

**LAW OFFICES OF LAWRENCE G. PAPALE**

LAWRENCE G. PAPALE (SBN 67068)  
lgpapale@papalelaw.com  
1308 Main Street, Suite 117  
St. Helena, CA 94574  
Telephone: (707) 963-1704

**NEDEAU LAW PC**

CHRISTOPHER A. NEDEAU (SBN 81297)  
cnedeau@nedeaulaw.net  
154 Baker Street  
San Francisco, CA 94117-2111  
Telephone: (415) 516-4010

**THE VEEN FIRM**

JOSEPHINE ALIOTO (SNB 282989)  
jalieto@veenfirm.com  
20 Haight Street  
San Francisco CA 94102  
Telephone: (415) 673-4800

**LAW OFFICE OF THERESA D. MOORE PC**

THERESA MOORE (SBN 99978)  
tmoore@aliotolaw.com  
One Sansome Street, 35th Floor  
San Francisco, CA 94104  
Telephone: (415) 613-1414

*Attorneys for Plaintiffs*

**ARNOLD & PORTER KAYE SCHOLER LLP**

By: /s/ Daniel B. Asimow

DANIEL B. ASIMOW (SBN 165661)  
daniel.asimow@arnoldporter.com  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
Telephone: (415) 471-3100  
Facsimile: (415) 471-3400

SONIA K. PFAFFENROTH (SBN 223984)  
MATTHEW WOLF (*pro hac vice*)  
MICHAEL B. BERNSTEIN (*pro hac vice*)  
KOLYA D. GLICK (*pro hac vice*)  
sonia.pfaffenroth@arnoldporter.com  
matthew.wolf@arnoldporter.com  
michael.b.bernstein@arnoldporter.com  
kolya.glick@arnoldporter.com  
601 Massachusetts Ave., N.W.  
Washington, DC 20001  
Telephone: (202) 942-5000  
Facsimile: (202) 942-5999

*Attorneys for Defendant, THE KROGER CO.*

**DEBEVOISE & PLIMPTON LLP**

By: /s/ John Neukom  
JOHN (JAY) NEUKOM (SBN 275887)  
jneukom@debevoise.com  
650 California Street  
San Francisco, CA 94108  
Telephone: (415) 738-5700

EDWARD D. HASSI (*pro hac vice*)  
LEAH S. MARTIN (*pro hac vice*)  
thassi@debevoise.com  
lmartin@debevoise.com  
801 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Telephone: (202) 383-8000

SHANNON R. SELDEN (*pro hac vice*)  
J. ROBERT ABRAHAM (*pro hac vice*)  
srselden@debevoise.com  
jrabraham@debevoise.com  
66 Hudson Boulevard  
New York, NY 10001  
Telephone: (212) 909-6000

*Attorneys for Defendant, ALBERTSONS  
COMPANIES, INC.*

**DECHERT LLP**

By: /s/ Russell P. Cohen  
Russell P. Cohen  
Joseph Trujillo  
DECHERT LLP  
One Bush Street, Ste. 1600  
San Francisco, CA 94104-4446  
Telephone: (415) 262-4500  
Fax: (415) 262-4555

Andrew J. Levander (*admitted pro hac vice*)  
DECHERT LLP  
1095 Avenue of the Americas  
New York, NY 10036-6797  
Telephone: (212) 698-3500  
Fax: (212) 698-3599

Thomas J. Miller (*admitted pro hac vice*)  
DECHERT LLP  
2929 Arch Street  
Philadelphia, PA 19104  
Telephone: (215) 994-4000  
Fax: (215) 994-2222

*Attorney for Defendant Cerberus Capital Management,  
L.P.*



**SIGNATURE ATTESTATION**

I, Lawrence Papale, am the ECF user whose ID and password are being utilized to electronically file this **STIPULATED REQUEST FOR AN ORDER MODIFYING BRIEFING SCHEDULE AND HEARING DATE FOR PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MOTIONS TO DISMISS; [PROPOSED ORDER]**. Pursuant to Local Rule 5-1(i)(3), I hereby attest that the other signatories have concurred in this filing.

DATED: May 3, 2023

/s/ Lawrence Papale

LAWRENCE G. PAPALE

**[PROPOSED] ORDER**

Having considered the parties' stipulation, the court hereby ORDERS that the proposed merger between Kroger and Albertsons will not close prior to September 15, 2023; Plaintiffs' Oppositions to the Defendants' Motions to Dismiss shall be due May 11, 2023; Defendants' Replies in Support of Defendants' Motions to Dismiss shall be due May 25, 2023; Plaintiffs' Motion for Preliminary Injunction and Defendants' Motions to Dismiss shall be heard on July 27, 2023; the Parties' Joint Case Management Statement shall be due May 26, 2023; and the Initial Case Management Conference shall occur on June 2, 2023 at 10:00 AM.

**IT IS SO ORDERED.**

DATED: May \_\_, 2023

---

HONORABLE VINCE CHHABRIA  
United States District Judge